No. 97-1472

Supreme Court, U.S.
FILED
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In The

Supreme Court of the United States

October Term, 1997

MICHAEL A. HADDLE,

Petitioner,

v.

JEANETTE G. GARRISON, DENNIS KELLY, G. PETER MOLLOY, JR., HEALTHMASTER, INC., CHRISTOPHER GARRISON, Individually and as Trustees for certain trusts, and JOHN DOES 1 through N, individually and as Trustees of certain trusts,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

JOINT APPENDIX

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Petition For Certiorari Filed March 5, 1998
Certiorari Granted May 26, 1998

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

February 22, 1996: A Complaint for Damages was filed by Michael A. Haddle (Haddle) against Jeanette G. Garrison (J. Garrison), Dennis Kelly (Kelly) and G. Peter Molloy, Jr. (Molloy) and Healthmaster, Inc. (Healthmaster) pursuant to 42 U.S.C. Section 1985 (2) (The Civil Rights Act 1871), O.C.G.A. §16-14-6 (The Georgia Racketeer Influenced and Corrupt Organizations Act), and Georgia Law Tortious Interference;

March 27, 1996: Haddle amended his Complaint for damages, adding as additional Defendants Christopher Garrison (C. Garrison), and John Does 1-N and adding a count for fraudulent conveyance.

April 11, 1996: Molloy filed his Answer to the Complaint.

April 15, 1996: J. Garrison filed her Answer to the Complaint and Amended Complaint and filed a Motion to Dismiss the Complaint and Amended Complaint.

April 15, 1996: Healthmaster filed its answer to the Complaint and Amended Complaint and filed a Motion to Dismiss the Complaint and Amended Complaint.

April 22, 1996: C. Garrison filed his Answer to the Complaint and Amended Complaint and filed a Motion to Dismiss the Complaint and Amended Complaint.

May 1, 1996: Haddle filed his Brief and Memorandum in Opposition to the Motion of J. Garrison to Dismiss the Complaint and Amended Complaint.

May 1, 1996: Haddle filed his Opposition to the Motion of Healthmaster to Dismiss the Complaint and Amended Complaint.

May 7, 1996: Haddle filed his Brief and Memorandum in Opposition to the Motion of C. Garrison to Dismiss the Amended Complaint.

May 20, 1996: J. Garrison filed a Reply Brief in Support of her Motion to Dismiss the Complaint and Amended Complaint.

May 20, 1996: Healthmaster filed its Reply Brief in Support of its Motion to Dismiss the Complaint and Amended Complaint.

May 24, 1996: C. Garrison filed his Reply Brief in Support of his Motion to Dismiss the Complaint and Amended Complaint.

May 29, 1996: Molloy filed a Motion to Dismiss the Complaint and Amended Complaint.

May 30, 1996: Haddle filed a Response to the Motion of Molloy to Dismiss the Complaint and Amended Complaint.

June 6, 1996: Haddle filed a Supplemental Memorandum in Opposition to the Motions of J. Garrison and Healthmaster to Dismiss the Complaint and Amended Complaint.

June 25, 1996: United States District Court Judge Anthony A. Alaimo entered an Order granting J. Garrison's Motion to Dismiss the Complaint and Amended Complaint, Healthmaster's Motion to Dismiss the Complaint and Amended Complaint, C. Garrison's Motion to

Dismiss the Complaint and Amended Complaint, and Molloy's Motion to Dismiss the Complaint and Amended Complaint. The Order determined that the decision of *Morast v Lance*, 807 F. 2d, 926 (11th Cir. 1987) required that the Court dismiss the federal claim under Section 1985(2). He further dismissed without prejudice all state law claims.

July 1, 1996: Kelly filed a Motion to Dismiss Plaintiff's Complaint and Amended Complaint.

July 2, 1996: Haddle filed a Response to Kelly's Motion to Dismiss the Plaintiff's Complaint and Amended Complaint.

July 17, 1996: Haddle filed a Notice of Appeal to the United States Court of Appeals, for the 11th Circuit, from the Order of June 25, 1996.

August 8, 1996: J. Garrison, Healthmaster, and C. Garrison filed a Motion in the Court of Appeals to Dismiss the Appeal of Haddle on the grounds that the Order appealed from was not a final judgment as to all parties and claims.

August 13, 1996: An Order was signed by Judge Anthony A. Alaimo, granting Kelly's Motion to Dismiss the claim in the Complaint and Amended Complaint, which was brought under Section 1985(2), dismissing without prejudice claims against Defendants John Does' 1-N and directing the Clerk to enter the appropriate judgment closing the action.

August 15, 1996: Judgment was entered in accordance with the Orders of June 25, 1996 and August 13, 1996 and the case was closed.

August 16, 1996: Haddle filed a Brief in Response to the Motion of J. Garrison, Healthmaster, and C. Garrison to Dismiss the Appeal to the United States Court of Appeals from the Eleventh Circuit.

August 27, 1996: Haddle filed a Supplemental Response to his Brief in Response to the Motion of J. Garrison, Healthmaster, and C. Garrison to Dismiss the Appeal.

September 9, 1996: Haddle filed a Notice of Appeal to the United States Court of Appeals for the Eleventh Circuit from the Order of June 25, 1996, the Order of August 13, 1996, and the Judgment of August 15, 1996.

September 9, 1996: Haddle filed in the Court of Appeals, a Motion to Consolidate the Appeal filed on July 17, 1996 with that being filed on September 9, 1996 as the Appeals involved the same case.

October 17, 1996: The Court of Appeals entered an Order, denying the Motion of J. Garrison, Healthmaster, and C. Garrison to Dismiss the Appeal.

October 28, 1996: The United States Court of Appeals for the 11th Circuit granted the Motion to Consolidate the Appeal filed on July 17, 1996 (96-8856) and the Appeal filed on September 9, 1996 (96-9072).

December 9, 1996: Haddle filed his Brief in Support of his Appeal from the Orders of the United States District Court for the Southern District of Georgia, dated June 25, 1996 and August 13, 1996 and the Judgment entered by the Clerk of the United States District Court for the Southern District of Georgia, dated August 15, 1996.

December 9, 1996: Haddle filed his Suggestion of Hearing En Banc with the Court of Appeals.

January 14, 1997: Molloy filed his Brief in Response to the Appeal of Haddle.

January 16, 1997: J. Garrison, Healthmaster, and C. Garrison filed their Brief in Response to the Appeal of Haddle.

January 30, 1997: Haddle filed his Reply Brief in support of his Appeal.

January 30, 1997: Kelly filed his Brief in Opposition to the Appeal of Haddle.

January 30, 1997: The Record of Appeal was certified and transmitted to the Court of Appeals.

September 17, 1997: Letter from counsel for J. Garrison, Healthmaster and C. Garrison to Court of Appeals notifying the Court of an intervening decision and new development and enclosing the Order of the Richmond County Superior Court granting summary judgment to all defendants in the case of *Haddle v Garrison, et al.*, No. 96-RCCV-572, Superior Court of Richmond County, Georgia, June 10, 1997.

December 5, 1997: The Court of Appeals issued its Per Curiam Opinion denying Haddle's Suggestion of Hearing En Banc and affirming the judgment of the District Court, concluding that the claims of Haddle were foreclosed by the Court's decision in *Morast v Lance*, 807 F. 2d 926 (11th Circuit, 1987).

February 9, 1998: The judgment of the Court of Appeals was made the judgment of the District Court.

March 5, 1998: Haddle transmitted for filing a petition for a Writ of Certiorari with the Supreme Court of the United States.

April 3, 1998: Molloy filed a Response to the Petition for Writ of Certiorari.

April 9, 1998: J. Garrison, Healthmaster, and C. Garrison filed a Brief in Opposition to the Petition for Writ of Certiorari.

May 26, 1998: The Supreme Court of the United States granted the Petition of Haddle for a Writ of Certiorari.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

MICHAEL A. HADDLE Plaintiff, vs. JEANETTE G. GARRISON, DENNIS KELLY, G. PETER MOLLOY, JR., and HEALTHMASTER, INC., Defendants.	)	CASE NO. CV 196029

COMPLAINT FOR DAMAGES PURSUANT TO 42 U.S.C. §1985(2) (THE CIVIL RIGHTS ACT OF 1871), O.C.G.A. §16-14-6 (THE GEORGIA RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT), AND GEORGIA LAW OF TORTIOUS INTERFERENCE

NOW COMES Plaintiff MICHAEL A. HADDLE and for this his complaint against Defendants JEANETTE G. GARRISON ("Garrison["]), DENNIS KELLY ("Kelly"), PETER MOLLOY ("Molloy") and HEALTHMASTER, INC. ("Healthmaster") shows as follows:

INTRODUCTORY STATEMENT

1. Plaintiff is a citizen and resident of the State of Georgia.

2. Defendant Garrison is a resident of the State of South Carolina.

3. Defendants Molloy and Kelly are residents of the Southern District of Georgia.

4. Defendant Healthmaster is a corporation organized and existing under the laws of the State of Georgia with its principal place of business within the Southern District of Georgia.

5. Jurisdiction is proper in this Court over Count I of this Complaint (the Civil Rights Act of 1871) by virtue of 28 U.S.C. §1331. Jurisdiction over Count II (Georgia RICO) and Count III (Tortious Interference) is proper in this Court because these Counts are pendent to Count I.

6. Venue is proper in this Court in that all Defendants except Defendant Garrison reside within the Southern District of Georgia and in that the actions of all Defendants as alleged below occurred within the Southern District of Georgia.

GENERAL FACTUAL ALLEGATIONS

7. From September 22, 1986 until approximately April 13, 1995, Plaintiff was employed by Defendant Healthmaster.

8. From approximately April 13, 1995 until his discharge as alleged below, Plaintiff was employed by Healthmaster Home Health Care, Inc., a Georgia corporation whose stock is owned entirely by Defendant Healthmaster.

9. Defendant Garrison has at all relevant times owned 50% of the stock of Healthmaster and controlled Healthmaster until April or May, 1995, when a trustee

was appointed for Healthmaster, then a debtor in possession under Chapter 11 of the federal Bankruptcy Code, by the United States Bankruptcy Court for the Southern District of Georgia.

10. The individual Defendants herein have all served in various capacities as corporate officers and directors of Defendant Healthmaster and of Healthmaster Home Health Care, Inc.

11. Defendant Molloy has at all relevant times been employed by Defendant Healthmaster or Healthmaster Home Health Care, Inc.

12. On March 8, 1995, a grand jury convened in the United States District Court for the Southern District of Georgia, Augusta Division, filed an indictment against Defendants Garrison Kelly, Healthmaster and others charging a total of 133 counts of fraud against various defendants, which indicment [sic] is enumerated as number CR-195-11 in this Court.

13. Although not indicted, Defendant Molloy was, on information and belief, a target of the ongoing criminal investigation.

14. Plaintiff cooperated with the investigation by federal agents which preceded this indictment and testified pursuant to subpoena before said grand jury and appeared pursuant to subpoena to testify before said grand jury, although his testimony was not actually taken due to the press of time.

15. As a result of their indictment, Defendants Garrison and Kelly were banned from any participation in

the affairs of Healthmaster Home Health Care, Inc., by order of said Bankruptcy Court.

16. On June 21, 1995, after Defendants had become aware that Plaintiff would appear as a witness at the criminal trial of Indictment No. CR 195-11, Defendant Molloy, who was then President of Defendant Healthmaster, having been retained in said position by the trustee, but acting at the direction of Defendants Garrison and Kelly and pursuant to a prior understanding and agreement between these three persons, terminated Plaintiff from his employment at Healthmaster Home Health Care, Inc..

COUNT I – CONSPIRACY IN VIOLATION OF 42 U.S.C. §1985(2) (THE CIVIL RIGHTS ACT OF 1871)

17. The allegations contained in paragraphs numbered "1" through "16" are incorporated herein by reference.

18. The decision to terminate Plaintiff was made by Defendants and others, not in furtherance of the business interests of Defendant Healthmaster, but instead for the purpose of retaliating against Plaintiff for his cooperation with federal agents and his testimony under subpoena to the federal grand jury, and in order to intimidate Plaintiff and others from cooperating with federal agents or testifying in any criminal matters against them including said indictment.

19. Defendants participated in and carried out the decision to terminate Plaintiff, not in furtherance of the business interests of Defendant Healthmaster, but rather

to protect themselves as criminal defendants or potential criminal defendants.

20. By means of the above described actions, and their agreement and plan to do the same, Defendants have violated 42 U.S.C. §1985(2), in that they have conspired within the State of Georgia to deter, by force, intimidation or threat, a party or witness in the United States District Court for the Southern District of Georgia, from attending such court, or from testifying in any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of the grand jurors of such court.

21. Plaintiff has been injured in his person and property by the acts of Defendants in violation of 42 U.S.C. §1985(2), and Plaintiff is entitled to recover his damages occasioned by such injury and deprivation against Defendants jointly and severally.

22. Because Defendants' acts were willful, intentional and malicious, Plaintiff is entitled to recover punitive damages against Defendants jointly and severally.

23. Pursuant to 42 U.S.C. §1988, Plaintiff is entitled to recover his expenses of litigation including a reasonable attorney's fee from Defendants jointly and severally.

COUNT II – VIOLATION OF THE GEORGIA RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT

24. The allegations contained in paragraphs numbered "1" through "23" are incorporated herein by reference.

25. The actions of Defendants alleged above in paragraphs numbered 14, 16 and 17 constitute racketeering activity within the meaning of O.C.G.A. §16-14-3(9)(A) and (B), in that they constitute a violation of 18 U.S.C. §1503 and also a felony punishable by imprisonment for more than one year under federal and Georgia common law of obstruction of justice.

26. After July 1, 1980, and within four years of Plaintiff's termination as alleged above, Defendants engaged in at least one other incident of racketeering activity that had the same or similar intent, result, accomplices or methods of commission and otherwise was interrelated to the Plaintiff's termination, by distinguishing characteristics, none of said incidents being isolated, such other incident being the termination of John P. O'Neal from his employment at Master Health Plan, Inc., a Georgia corporation ("Master Health"), in retaliation for his testimony before the same federal grand jury for which Plaintiff testified as alleged above.

27. The above incidents of racketeering activity constitute a pattern of racketeering activity, the purpose and effect of which was to acquire or maintain, directly or indirectly, an interest in or control of certain enterprises, to wit, Defendant Healthmaster and Master Health, to

conduct or participate in said enterprises, and to acquire money.

28. Defendants conspired and endeavored to conduct or participate in, directly or indirectly, the said enterprises through a pattern of racketeering activity, and to acquire money.

29. Defendants conspired and endeavored to acquire or maintain, directly or indirectly, an interest in said enterprises and to conduct or participate in, directly or indirectly, said enterprises through a pattern of racketeering activity, and to acquire money.

30. In committing the acts to which reference is made in this Count, Defendants have acted willfully, maliciously, wantonly, oppressively, intentionally, knowingly, fraudulently, in bad faith, and with reckless disregard of the consequences, and with such entire want of care as raises the presumption of conscious indifference to consequences, such as to entitle Plaintiff to punitive damages under Georgia law, including O.C.G.A. §51-12-5.1, and further such punitive damages are not subject to limitation provided by O.C.G.A. §51-12-5.1(g), because each Defendant acted with the specific intent to cause harm to Plaintiff.

31. Plaintiff is a person injured by reason of Defendants' violation of O.C.G.A. §16-14-4 and is entitled to three times his actual damages sustained, as well as punitive damages and attorneys' fees.

COUNT III – TORTIOUS INTERFERENCE

32. The allegations contained in paragraphs numbered "1" through "31" are incorporated herein by reference.

33. Although they had no authority to act for Healthmaster Home Health Care, Inc., at the time of Plaintiff's termination, Defendants Garrison and Kelly, through their agreement with and direction to Defendant Molloy, and acting both for themselves and for Defendant Healthmaster, tortiously interfered with Plaintiff's employment relationship with Healthmaster Home Health Care, Inc. by causing Plaintiff's termination.

34. Defendant Molloy, in terminating Plaintiff from his employment at Healthmaster Home Health Care, Inc., tortiously interfered with Plaintiff's relationship with Healthmaster Home Health Care, Inc. because Defendant Molloy acted not for the benefit of Healthmaster Home Health Care, Inc. but in order to protect himself and Defendants Garrison, Kelly and Healthmaster as alleged above.

35. Plaintiff had a legitimate continuing expectation of employment with Healthmaster Home Health Care, Inc. and his termination has resulted in actual damages.

36. Because Defendants acted as alleged in paragraph 28, Plaintiff is entitled to punitive damages.

37. In acting as alleged above, Defendants have acted in bad faith, have been stubbornly litigious and have caused Plaintiff unnecessary trouble and expense, whereby Plaintiff is entitled to recover his expenses of litigation including reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands trial by jury on all counts and judgment for money damages against Defendants jointly and severally in such amount for actual damages as the evidence may show, treble damages pursuant to Georgia statute as alleged above, punitive damages, and reasonable attorneys' fees and expenses of litigation, together with all costs of court and such other and further relief as the Court may deem equitable and just.

This 22nd day of February, 1996.

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complaint

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

MICHAEL A. HADDLE Plaintiff, vs. JEANETTE G. GARRISON, DENNIS KELLY, G. PETER MOLLOY, JR., HEALTHMASTER, INC., CHRISTOPHER GARRISON, individually and as Trustee of certain trusts, and JOHN DOES 1 THROUGH N, individually and as Trustees of certain trusts, Defendants.	)	CASE NO. CV 196-29

AMENDED COMPLAINT FOR DAMAGES PURSUANT TO 42 U.S.C. §1985(2) (THE CIVIL RIGHTS ACT OF 1871), O.C.G.A. §16-14-6 (THE GEORGIA RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT), AND GEORGIA LAW OF TORTIOUS INTERFERENCE AND FRAUDULENT CONVEYANCE

(Filed Mar. 27, 1996)

NOW COMES Plaintiff MICHAEL A. HADDLE and for this his complaint against Defendants JEANETTE G. GARRISON ("Garrison"), DENNIS KELLY ("Kelly"), PETER MOLLOY ("Molloy"), HEALTHMASTER, INC. ("Healthmaster"), CHRISTOPHER GARRISON, as Trustee of certain trusts ("Garrison Trustee"), and JOHN

DOES 1 THROUGH N, as Trustees of certain trusts ("John Doe Trustees"), shows as follows:

—

INTRODUCTORY STATEMENT

1. Plaintiff is a citizen and resident of the State of Georgia.

2. Defendant Garrison is a resident of the State of South Carolina.

3. Defendants Molloy, Kelly and Garrison Trustee are residents of the Southern District of Georgia. Defendant John Doe Trustees are named because Plaintiff does not know whether the trusts described in Count IV hereinbelow have trustees other than Defendant Garrison Trustee.

4. Defendant Healthmaster is a corporation organized and existing under the laws of the State of Georgia with its principal place of business within the Southern District of Georgia.

5. Jurisdiction is proper in this Court over Count I of this Complaint (the Civil Rights Act of 1871) by virtue of 28 U.S.C. §1331. Jurisdiction over Count II (Georgia RICO), Count III (Tortious Interference) and Count IV (Fraudulent Conveyance) is proper in this Court because these Counts are pendent to Count I.

6. Venue is proper in this Court in that most Defendants reside within the Southern District of Georgia and in that the actions of all Defendants as alleged below occurred within the Southern District of Georgia.

GENERAL FACTUAL ALLEGATIONS

7. From September 22, 1986 until approximately April 13, 1995, Plaintiff was employed by Defendant Healthmaster.

8. From approximately April 13, 1995 until his discharge as alleged below, Plaintiff was employed by Healthmaster Home Health Care, Inc., a Georgia corporation whose stock is owned entirely by Defendant Healthmaster.

9. Defendant Garrison has at all relevant times owned 50% of the stock of Healthmaster and controlled Healthmaster until April or May, 1995, when a trustee was appointed for Healthmaster, then a debtor in possession under Chapter 11 of the federal Bankruptcy Code, by the United States Bankruptcy Court for the Southern District of Georgia.

10. The individual Defendants herein (except for Defendants Garrison Trustee and John Doe Trustees) have all served in various capacities as corporate officers and directors of Defendant Healthmaster and of Healthmaster Home Health Care, Inc.

11. Defendant Mc oy has at all relevant times been employed by Defendant Healthmaster or Healthmaster Home Health Care, Inc.

12. On March 8, 1995, a grand jury convened in the United States District Court for the Southern District of Georgia, Augusta Division, filed an indictment against Defendants Garrison, Kelly, Healthmaster and others charging a total of 133 counts of fraud against various

defendants, which indictment is enumerated as number CR-195-11 in this Court.

13. Although not indicted, Defendant Molloy was, on information and belief, a target of the ongoing criminal investigation.

14. Plaintiff cooperated with the investigation by federal agents which preceded this indictment and testified pursuant to subpoena before said grand jury and appeared pursuant to subpoena to testify before said grand jury, although his testimony was not actually taken due to the press of time.

15. As a result of their indictment, Defendants Garrison and Kelly were banned from any participation in the affairs of Healthmaster Home Health Care, Inc., by order of said Bankruptcy Court.

16. On June 21, 1995, after Defendants (other than Defendants Garrison Trustee and John Doe Trustees) had become aware that Plaintiff would appear as a witness at the criminal trial of Indictment No. CR 195-11, Defendant Molloy, who was then President of Defendant Healthmaster, having been retained in said position by the trustee, but acting at the direction of Defendants Garrison and Kelly and pursuant to a prior understanding and agreement between these three persons, terminated Plaintiff from his employment at Healthmaster Home Health Care, Inc.

COUNT I – CONSPIRACY IN VIOLATION OF 42 U.S.C. §1985(2) (THE CIVIL RIGHTS ACT OF 1871)

17. The allegations contained in paragraphs numbered "1" through "16" are incorporated herein by reference.

18. The decision to terminate Plaintiff was made by Defendants (other than Defendants Garrison Trustee and John Doe Trustees) and others, not in furtherance of the business interests of Defendant Healthmaster, but instead for the purpose of retaliating against Plaintiff for his cooperation with federal agents and his testimony under subpoena to the federal grand jury, and in order to intimidate Plaintiff and others from cooperating with federal agents or testifying in any criminal matters against them including said indictment.

19. Defendants (other than Defendants Garrison Trustee and John Doe Trustees) participated in and carried out the decision to terminate Plaintiff, not in furtherance of the business interests of Defendant Healthmaster, but rather to protect themselves as criminal defendants or potential criminal defendants.

20. By means of the above described actions, and their agreement and plan to do the same, Defendants (other than Defendants Garrison Trustee and John Doe Trustees) have violated 42 U.S.C. §1985(2), in that they have conspired within the State of Georgia to deter, by force, intimidation or threat, a party or witness in the United States District Court for the Southern District of Georgia, from attending such court, or from testifying in any matter pending therein, freely, fully, and truthfully,

or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of the grand jurors of such court.

21. Plaintiff has been injured in his person and property by the acts of Defendants (other than Defendants Garrison Trustee and John Doe Trustees) in violation of 42 U.S.C. §1985(2), and Plaintiff is entitled to recover his damages occasioned by such injury and deprivation against Defendants jointly and severally.

22. Because said Defendants' acts were willful, intentional and malicious, Plaintiff is entitled to recover punitive damages against Defendants jointly and severally.

23. Pursuant to 42 U.S.C. §1988, Plaintiff is entitled to recover his expenses of litigation including a reasonable attorney's fee from said Defendants jointly and severally.

COUNT II – VIOLATION OF THE GEORGIA RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT

24. The allegations contained in paragraphs numbered "1" through "23" are incorporated herein by reference.

25. The actions of Defendants alleged above in paragraphs numbered 14, 16 and 17 constitute racketeering activity within the meaning of O.C.G.A. §16-14-3(9)(A) and (B), in that they constitute a violation of 18 U.S.C. §1503 and also a felony punishable by

imprisonment for more than one year under federal and Georgia common law of obstruction of justice.

26. After July 1, 1980, and within four years of Plaintiff's termination as alleged above, Defendants (other than Defendants Garrison Trustee and John Doe Trustees) engaged in at least one other incident of racketeering activity that had the same or similar intent, result, accomplices or methods of commission and otherwise was interrelated to the Plaintiff's termination, by distinguishing characteristics, none of said incidents being isolated, such other incident being the termination of John P. O'Neal from his employment at Master Health Plan, Inc., a Georgia corporation ("Master Health"), in retaliation for his testimony before the same federal grand jury for which Plaintiff testified as alleged above.

27. The above incidents of racketeering activity constitute a pattern of racketeering activity, the purpose and effect of which was to acquire or maintain, directly or indirectly, an interest in or control of certain enterprises, to wit, Defendant Healthmaster and Master Health, to conduct or participate in said enterprises, and to acquire money.

28. Defendants (other than Garrison Trustee and John Doe Trustees) conspired and endeavored to conduct or participate in, directly or indirectly, the said enterprises through a pattern of racketeering activity, and to acquire money.

29. Said Defendants conspired and endeavored to acquire or maintain, directly or indirectly, an interest in said enterprises and to conduct or participate in, directly

or indirectly, said enterprises through a pattern of racketeering activity, and to acquire money.

30. In committing the acts to which reference is made in this Count, said Defendants have acted willfully, maliciously, wantonly, oppressively, intentionally, knowingly, fraudulently, in bad faith, and with reckless disregard of the consequences, and with such entire want of care as raises the presumption of conscious indifference to consequences, such as to entitle Plaintiff to punitive damages under Georgia law, including O.C.G.A. §51-12-5.1, and further such punitive damages are not subject to limitation provided by O.C.G.A. §51-12-5.1(g), because each Defendant acted with the specific intent to cause harm to Plaintiff.

31. Plaintiff is a person injured by reason of Defendants' violation of O.C.G.A. §16-14-4 and is entitled to three times his actual damages sustained, as well as punitive damages and attorneys' fees.

COUNT III – TORTIOUS INTERFERENCE

32. The allegations contained in paragraphs numbered "1" through "31" are incorporated herein by reference.

33. Although they had no authority to act for Healthmaster Home Health Care, Inc., at the time of Plaintiff's termination, Defendants Garrison and Kelly, through their agreement with and direction to Defendant Molloy, and acting both for themselves and for Defendant Healthmaster, tortiously interfered with Plaintiff's

employment relationship with Healthmaster Home Health Care, Inc. by causing Plaintiff's termination.

34. Defendant Molloy, in terminating Plaintiff from his employment at Healthmaster Home Health Care, Inc., tortiously interfered with Plaintiff's relationship with Healthmaster Home Health Care, Inc. because Defendant Molloy acted not for the benefit of Healthmaster Home Health Care, Inc. but in order to protect himself and Defendants Garrison, Kelly and Healthmaster as alleged above.

35. Plaintiff had a legitimate continuing expectation of employment with Healthmaster Home Health Care, Inc. and his termination has resulted in actual damages.

36. Because said Defendants acted as alleged in paragraph 30, Plaintiff is entitled to punitive damages.

37. In acting as alleged above said Defendants have acted in bad faith, have been stubbornly litigious and have caused Plaintiff unnecessary trouble and expense, whereby Plaintiff is entitled to recover his expenses of litigation including reasonable attorneys' fees.

COUNT IV – FRAUDULENT CONVEYANCE

38. The allegations contained in paragraphs numbered 1 through 37 are incorporated herein by reference.

39. On information and belief, on a date or dates unknown but believed by Plaintiff to be sometime during the year 1995 Defendant Garrison either conveyed her stock interest in Defendant Healthmaster, or caused Defendant Healthmaster to convey its stock interest in

Healthmaster Home Health Care, Inc., to Defendant Garrison Trustee and/or Defendant John Doe Trustees in trust for the benefit of Defendant Garrison and Defendant Garrison's children. Also, on information and belief, on a date or dates unknown but believed by Plaintiff to be sometime during the year 1995, Defendant Garrison either conveyed or caused to be conveyed her stock interest in an affiliate of Defendant Healthmaster, Health Care Services, Inc., to Defendant Garrison Trustee and/or Defendant John Doe Trustees in trust for the benefit of Defendant Garrison and Defendant Garrison's children. Plaintiff does not know the exact date or dates of such conveyances (the "Conveyances") or the names and trustees (other than Defendant Garrison Trustee), if any, of the grantee trusts.

40. Each of the Conveyances was made at a time when the grantor was insolvent, was made in trust, and reserved a trust or benefit to the grantor.

41. Each of the Conveyances was voluntary and was made not for valuable consideration at a time when Defendant Garrison and/or Defendant Healthmaster was insolvent.

42. Each of the Conveyances was made by Defendant Garrison and Defendant Healthmaster with the intention to delay or to defraud creditors, which intention was known to the taking parties.

43. Each of the Conveyances is null and void as to Plaintiff.

44. Each of the Conveyances was made by the grantor and was received by Defendant Garrison Trustee

and/or Defendant John Doe Trustees, with fraudulent intent evidencing willful misconduct, malice, fraud, wantonness, oppression and that entire want of care which would raise the presumption of conscious indifference to consequences, so as to entitle Plaintiff to punitive damages pursuant to O.C.G.A. §51-12-5.1, and further such punitive damages are not subject to limitation provided by O.C.G.A. §51-12-5.1(g), because each of the said Defendants acted with the specific intent to cause harm to creditors such as Plaintiff.

45. In connection with the matters to which reference is made in this Count, Defendants Garrison, Garrison Trustee and John Doe Trustees have acted in bad faith, have been stubbornly litigious and have caused Plaintiff unnecessary trouble and expense so as to entitle Plaintiff to an award of attorneys' fees and expenses of litigation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands trial by jury on all counts and judgment (1) as to all Defendants jointly and severally except Defendants Garrison Trustee and John Doe Trustees, for money damages in such amount for actual damages as the evidence may show and treble damages pursuant to Georgia statute as alleged above, (2) as to Defendants Garrison, Garrison Trustee as trustee and John Doe Trustees as trustees, jointly and severally, a decree establishing that the Conveyances are null and void as to Plaintiff, and (3) as to all Defendants, jointly and severally, judgment for punitive damages and reasonable attorneys' fees and expenses of litigation,

together with all costs of court and such other and further relief as the Court may deem equitable and just.

This 27th day of March, 1996.

C. Thompson Harley
Georgia Bar No. 326800
Fletcher, Harley & Fletcher
Post Office Box 2084
Augusta, Georgia 30903-2084
(706) 724-0558

/s/ Charles C. Stebbins, III
Charles C. Stebbins, III
Georgia Bar No. 677350
Robert C. Threlkeld
Georgia Bar No. 710760
WARLICK, TRITT & STEBBINS
699 Broad Street
1500 First Union Bank Bldg.
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(706) 722-7543

Richard E. Miley
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Post Office Box 6352
North Augusta, S.C. 29841
(803) 279-9516

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

MICHAEL A. HADDLE, Plaintiff, v. JEANETTE G. GARRISON, DENNIS KELLY, G. PETER MOLLOY, JR., HEALTHMASTER, INC., a Georgia corporation, CHRISTOPHER GARRISON, individually and as Trustee of certain trusts, and JOHN DOES 1 through N, individually and as Trustees of certain trusts, Defendants.	Civil Action No. CV-196-029

MOTION OF JEANETTE G. GARRISON TO DISMISS COMPLAINT AND AMENDED COMPLAINT

Defendant Jeanette G. Garrison, pursuant to Fed. R. Civ. P. 12, hereby moves to dismiss the Complaint and Amended Complaint against her on the grounds that Count I fails to state a claim upon which relief can be granted, and since Counts II, III and IV plead only state law claims, this Court lacks subject matter jurisdiction over those claims. The grounds for this motion are more fully set forth in the Brief in Support filed contemporaneously herewith.

WHEREFORE, Jeanette G. Garrison respectfully requests that this Motion and the grounds therefor be inquired into and that this Motion be granted.

This 13th day of April, 1996.

/s/ Phillip A. Bradley
Phillip A. Bradley
Georgia Bar No. 075137

LONG, ALDRIDGE
& NORMAN, LLP
One Peachtree Center
Suite 5300
303 Peachtree Street
Atlanta, GA 30308
(404) 527-8312

Attorney for Defendant
Jeanette G. Garrison

[CERTIFICATE OF SERVICE OMITTED IN PRINTING]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

MICHAEL A. HADDLE, Plaintiff, v. JEANETTE G. GARRISON, DENNIS KELLY, G. PETER MOLLOY, JR., HEALTHMASTER, INC., CHRISTOPHER GARRISON, individually and as Trustee of certain trusts, and JOHN DOES 1 through N, individually and as Trustees of certain trusts, Defendants.	Civil Action No. CV-196-029

MOTION OF HLM, INC. TO DISMISS COMPLAINT AND AMENDED COMPLAINT AND BRIEF IN SUPPORT THEREOF

HLM, Inc. ("HLM") (f/k/a Healthmaster, Inc.) respectfully moves the Court to dismiss the complaint and amended complaint. In order to avoid burdening the Court with repetitive and duplicative pleadings and motions, and since the grounds and issues are the same, HLM hereby adopts and incorporates by reference the Brief in Support of Motion to Dismiss filed by Jeanette G. Garrison.

WHEREFORE, HLM respectfully requests that this motion be granted and that the Complaint and Amended Complaint as to HLM be dismissed.

This 13 day of April, 1996.

/s/ Phillip A. Bradley
Phillip A. Bradley
Georgia Bar No. 075137

LONG, ALDRIDGE
& NORMAN, LLP
One Peachtree Center
Suite 5300
303 Peachtree Street
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(404) 527-8312

Attorney for Defendant
HLM, Inc.

[CERTIFICATE OF SERVICE
OMITTED IN PRINTING]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

MICHAEL A. HADDLE, Plaintiff, v. JEANETTE G. GARRISON, DENNIS KELLY, G. PETER MOLLOY, JR., HEALTHMASTER, INC., CHRISTOPHER GARRISON, individually and as Trustee of certain trusts, and JOHN DOES 1 through N, individually and as Trustees of certain trusts, Defendants.	Civil Action No. CV-196-029

MOTION OF CHRISTOPHER GARRISON, INDIVIDUALLY AND AS TRUSTEE OF CERTAIN TRUSTS, TO DISMISS COMPLAINT AND AMENDED COMPLAINT AND BRIEF IN SUPPORT THEREOF

Christopher Garrison, individually and as Trustee of certain trusts, ("Garrison") respectfully moves the Court to dismiss the complaint and amended complaint. In order to avoid burdening the Court with repetitive and duplicative pleadings and motions, and since the grounds and issues are the same, Garrison hereby adopts and incorporates by reference the Brief in Support of Motion to Dismiss filed by Jeanette G. Garrison.

In addition, Garrison hereby supplements the Brief in Support of Motion to Dismiss filed by Jeanette G. Garrison. Garrison is not a defendant in the federal claim asserted in Count I of the Complaint and Amended Complaint. Garrison is a defendant only in Count IV of the Amended Complaint which is a claim under Georgia law. Therefore, there is no independent federal basis for this Court asserting jurisdiction over Garrison.

Plaintiff bases its claim of jurisdiction over Garrison in this Court on 28 U.S.C. § 1367. However, supplemental jurisdiction over "additional parties" is only appropriate if the "claims . . . are so related to claims in the action with[ ] . . . original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a). The state claim must "involve the same facts, occurrences, witnesses, and evidence" as the federal claim to be part of the same case or controversy. *Palmer v. Hospital Authority of Randolph County*, 22 F.3d 1559, 1566-67 (11th Cir. 1994). For supplemental jurisdiction to exist, "the state and federal claims must arrive from a common nucleus of operative fact." *Lehighton Area School District v. Gilbert*, 787 F. Supp. 429, 432 (M.D. Pa. 1992) (quoting *United Mine Workers v. Gibbs*, 383 U.S. 715, 725, 86 S.Ct. 1130, 1138 (1966)).

The federal claim asserted by Plaintiff in Count I of the Complaint and Amended Complaint alleges that the Defendants, other than Garrison, conspired to retaliate against Plaintiff for his cooperation with a federal government investigation and to intimidate Plaintiff from cooperating further and testifying in a federal criminal trial. Count IV of the Amended Complaint, on the other hand, alleges that Defendant Jeanette G. Garrison, in

violation of Georgia law, fraudulently conveyed her stock in HLM, Inc. (f/k/a Healthmaster, Inc.) for the benefit of herself and her children. Further, the other state law claims asserted in Counts II and III of the Complaint and Amended Complaint both relate to the termination of Plaintiff's employment. Counts II and III may relate to the same facts as Count I but they clearly do not share the same facts as Count IV.

Counts I and IV of the Complaint and Amended Complaint are completely unrelated and, therefore, there is no basis for supplemental jurisdiction over Garrison. Counts I and IV will not share the same facts, occurrences, witnesses or evidence. Plaintiff does not allege, nor is it conceivable, that Jeanette G. Garrison's transfer of her stock in HLM, Inc. was in any way related to Plaintiff's alleged cooperation and testimony for the government in a federal criminal trial. For these reasons, Plaintiff's Complaint as to Garrison should be dismissed for a lack of subject matter jurisdiction. *See, e.g., Counsel of Unit Owners v. Recreational Industries, Inc.*, 793 F. Supp. 120 (D. Md. 1992) (the plaintiff's state law claim requesting injunctive relief for alleged violations of Condominium Declaration was not sufficiently related to the plaintiff's anti-trust claim); *Smith v. Burdette Chrysler Corp.*, 74 F. Supp. 380 (D.S.C. 1991) (the defendant against which the plaintiff had asserted only state law claims was not subject to supplemental jurisdiction because the claims were uniquely state law matters).

WHEREFORE, Garrison respectfully requests that this motion be granted and that the Complaint and Amended Complaint as to Garrison be dismissed.

This 11th day of April, 1996.

/s/ Phillip A. Bradley
Phillip A. Bradley
Georgia Bar No. 075137

LONG, ALDRIDGE
& NORMAN, LLP
One Peachtree Center
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303 Peachtree Street
Atlanta, GA 30308
(404) 527-8312

Attorney for Defendant
Christopher Garrison,
individually and as Trustee
for certain trusts

[CERTIFICATE OF SERVICE OMITTED IN PRINTING]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

MICHAEL A. HADDLE, Plaintiff, v. JEANETTE G. GARRISON, DENNIS KELLY, G. PETER MOLLOY, JR., HEALTHMASTER, INC., CHRISTOPHER GARRISON, individually and as Trustee of certain trusts, and JOHN DOES 1 through N, individually and as Trustees of certain trusts, Defendants.	Civil Action File No. CV196-029

MOTION OF G. PETER MOLLOY, JR. TO DISMISS COMPLAINT AND AMENDED COMPLAINT

Defendant G. Peter Molloy, Jr. pursuant to Fed. R. Civ. P. 12, hereby moves to dismiss the Complaint and amended Complaint against him on the grounds that Count I fails to state a claim upon which relief can be granted, and since Counts II and III plead only state law claims, this Court lacks subject matter jurisdiction over those claims. Grounds for this motion are more fully set

forth in the Brief in Support filed contemporaneously herewith.

WHEREFORE, Defendant Molloy prays that his Motion to Dismiss be granted.

This 29th day of May, 1996.

/s/ J. Patrick Claiborne
J. PATRICK CLAIBORNE
GA State Bar No. 126337
Attorney for Defendant
G. Peter Molloy, Jr.

[CERTIFICATE OF SERVICE OMITTED IN PRINTING]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

MICHAEL A. HADDLE, Plaintiff,	:	CIVIL ACTION
v.	:	
JEANETTE G. GARRISON, DENNIS KELLY, G. PETER MOLLOY, JR., HEALTHMASTER, INC., a Georgia Corporation, CHRISTOPHER GARRISON, individually and as Trustee of certain trusts, and JOHN DOES 1 through N, individually and as Trustees of certain trusts,	:	
Defendants.	:	NO. CV196-29

ORDER

(Filed Jun. 25, 1996)

Plaintiff, Michael A. Haddle, has brought the current litigation seeking damages under Section 1985(2) of Title 42 to the United States Code, and state law. Presently before the Court are four motions to dismiss for failure to state a claim upon which relief can be granted under Rule 12(b)(6) of the Federal Rules of Civil Procedure. These motions have been filed by Defendants, Jeanette G. Garrison (DKT. #21), Healthmaster, Inc. (DKT. #23), Christopher Garrison (DKT. #26), and G. Peter Molloy, Jr. (DKT. #44). For the reasons stated below, Defendants' motions will be **GRANTED.**

FACTS

Haddle is a former employee of Healthmaster Home Health Care, Inc. He claims that he was improperly discharged from his employment by Defendants in an attempt to deter his participation as a witness in a Federal criminal trial. At the times relevant to this litigation, Haddle concedes that he was an at-will employee.

DISCUSSION

I. Rule 12(b)(6)

Rule 12(b)(6) permits a defendant to move to dismiss a complaint on the grounds that the plaintiff has failed to state a claim upon which relief can be granted. A motion under Rule 12(b)(6) attacks the legal sufficiency of the complaint. In essence, the movant says, "Even if everything you allege is true, the law affords you no relief." Consequently, in determining the merits of a 12(b)(6) motion, a court must assume that all of the factual allegations of the complaint are true. *Jackson v. Okaloosa County Fla.*, 21 F.3d 1531, 1534 (11th Cir. 1994). A court should not dismiss a complaint for failure to state a claim unless it is clear that the plaintiff can prove "no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957).; *See also Blackston v. State of Alabama*, 30 F.3d 117, 119 (11th Cir. 1994) (citing, *Hishon v. King & Spalding*, 467 U.S. 69, 73, 104 S. Ct. 2229, 81 L. Ed. 2d 59 (1984)).

II. 42 U.S.C. § 1985(2)

Section 1985(2) grants a private cause of action for injuries when:

> [T]wo or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified. . . .

In the case at bar, Haddle asserts that he can maintain an action under Section 1985(2) despite the fact that he was defined as an at-will employee during the term of his employment. This is directly contrary to binding precedent of the Eleventh Circuit. Case law states:

> [T]o make out a cause of action under § 1985(2) the plaintiff must have suffered an actual injury. Because [Plaintiff] was an at-will employee . . . he has no constitutionally protected interest in continued employment. Therefore, [Plaintiff's] discharge did not constitute an actual injury under this statute.

Morast v. Lance, 807 F.2d 926, 930 (11th Cir. 1987). Given the clear language of *Morast*, the Court is required to **DISMISS** Haddle's claim under Section 1985(2).

III. State Law Claims

Haddle has also alleged numerous state law claims against Defendants. Since the federal issue pending in this litigation has been disposed, the Court believes that the remaining state law issues should be left to the courts

of Georgia. The Court declines to retain discretionary supplemental jurisdiction over the remainder of this case. *See* 28 U.S.C. § 1367(c)(3).

CONCLUSION

The Court has determined that, under Rule 12(b)(6) Haddle has failed to state a federal claim upon which relief can be granted. His claim under section 1985(2) is **DISMISSED** with respect to the above named Defendants.[1] Additionally, all state law claims are **DISMISSED WITHOUT PREJUDICE.**

SO ORDERED, this 25 day of June, 1996.

/s/ Anthony A. Alaimo
JUDGE, UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

[1] Haddle's claims against Dennis Kelly and the unnamed John Does cannot be dismissed, as a motion requesting such action has not been filed.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

MICHAEL A. HADDLE, Plaintiff, vs. JEANETTE G. GARRISON, DENIS [SIC] KELLY, G. PETER MOLLOY, JR., HEALTHMASTER, INC., CHRISTOPHER GARRISON, individually and as Trustee of certain trusts, and JOHN DOES 1 through N, individually and as Trustees of certain trusts, Defendants.	)	CASE NO. CV 196-029

DEFENDANT DENNIS KELLY'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT AND AMENDED COMPLAINT

Defendant Dennis Kelly, pursuant to Fed. R. Civ. P. 12, hereby moves to dismiss the Complaint and Amended Complaint against her on the grounds that Count I fails to state a claim upon which relief can be granted, and since Counts II, III, and IV plead only state law claims, this Court lacks subject matter jurisdiction over those claims. The grounds for this motion are more fully set forth in the Brief in Support filed contemporaneously herewith.

WHEREFORE, Dennis Kelly respectfully requests that this Motion and the grounds therefor be inquired into and that this Motion be granted.

This 1st day of July, 1996.

/s/ William H. Lumpkin
William H. Lumpkin

William H. Lumpkin
505 Courthouse Lane
Augusta, Georgia 30901
706-724-2323
Ga. Bar #461025

[CERTIFICATE OF SERVICE OMITTED IN PRINTING]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA AUGUSTA DIVISION

MICHAEL A. HADDLE,	:	CIVIL ACTION
Plaintiff,	:	
v.	:	
JEANETTE G. GARRISON, DENNIS KELLY, G. PETER MOLLOY, JR., HEALTHMASTER, INC., a Georgia Corporation, CHRISTOPHER GARRISON, individually and as Trustee of certain trusts, and JOHN DOES 1 through N, individually and as Trustees of certain trusts,	:	NO. CV196-29
Defendants.	:	

ORDER

(Filed Aug. 13, 1996)

Plaintiff, Michael A. Haddle, brings the current litigation seeking damages under Section 1985(2) of Title 42 to the United States Code and state law. Presently before the Court is the motion of Defendant, Dennis Kelly, to dismiss under the provisions of Rule 12 of the Federal Rules of Civil Procedure. For the reasons stated in the June 25, 1996, Order, the Court finds that Haddle has failed to state a claim upon which relief can be granted. Accordingly, Kelly's motion is **GRANTED**.

The only remaining defendants in this case are the unknown John Does 1 through N. The Court finds that Haddle has failed to perfect service on these defendants

within the 120 day limit mandated by Rule 4(m) of the Federal Rules of Civil Procedure. Therefore, the claims against these defendants must also be **DISMISSED** without prejudice. The clerk is directed to enter the appropriate judgment closing this action.

SO ORDERED, this 13 day of August, 1996.

/s/ Anthony A. Alaimo
JUDGE, UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT
OF GEORGIA

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF GEORGIA

MICHAEL A. HADDLE,
Plaintiff,

v.

JEANETTE G. GARRISON, DENNIS KELLY, G. PETER MOLLOY, JR., HEALTHMASTER, INC., a Georgia Corporation, CHRISTOPHER GARRISON, individually and as Trustee of certain trusts, and JOHN DOES 1 through N, individually and as Trustees of certain trusts,
Defendants.

JUDGMENT IN A CIVIL CASE

CASE NUMBER: CV 196-029

Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

Decision by Court. This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that, in accordance with the Orders of this Court entered on June 25, 1996 and August 13, 1996 which granted the Motions to Dismiss by Defendants Jeanette G. Garrison, G. Peter Molloy, Jr., Healthmaster, Inc., Christopher Garrision, and Dennis Kelly, respectively, this civil action hereby stands **DISMISSED**. Costs are hereby assessed against the Plaintiff, and are to be taxed by the Clerk of this Court.

IT IS FURTHER ORDERED that the claims against Defendants John Does 1 through N are hereby **DISMISSED** without prejudice.

AUGUST 15, 1996
Date

HENRY R. CRUMLEY, JR.
Clerk

/s/ Joseph A. Howell, III
(By) Deputy Clerk

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 96-8856

D. C. Docket No. CV 196-29 (AAA)

MICHAEL A. HADDLE,

Plaintiff-Appellant,

versus

JEANETTE G. GARRISON, DENNIS KELLY, G. PETER MOLLOY, JR., HEALTHMASTER, INC., CHRISTOPHER GARRISON, individually and as Trustee of certain trusts, et al.,

Dedendants-Appellees.

No. 96-9072

D. C. Docket No. 96-00029-CV-1 (AAA)

MICHAEL A. HADDLE,

Plaintiff-Appellant,

versus

JEANETTE G. GARRISON, DENNIS KELLY, G. PETER MOLLOY, JR., HEALTHMASTER, INC., CHRISTOPHER GARRISON, individually and as Trustee of certain trusts, JOHN DOES, 1 Throuth N, individually and as Trustees of certain trusts,

Defendants-Appellees.

Appeals from the United States District Court
for the Southern District of Georgia

(Filed December 5, 1997)

Before COX and BARKETT, Circuit Judges, and HUNT,* District Judge. PER CURIAM:

Michael A. Haddle appeals following the district court's dismissal of his 42 U.S.C. § 1985(2) claim for failure to state a claim. We conclude that Haddle's arguments on appeal are foreclosed by this court's decision in *Morast v. Lance*, 807 F.2d 926 (11th Cir. 1987). The judgment of the district court is therefore affirmed.

AFFIRMED.[1]

---

*Honorable Willis B. Hunt, Jr., U. S. District Judge for the Northern District of Georgia, sitting by designation.

[1] No member of this panel nor other judge in regular active service on the court has requested that the court be polled on Haddle's Suggestion of Hearing En Banc. *See* Fed.R.App.P.35; 11th Cir.R. 35-5. Therefore, Haddle's Suggestion of Hearing En Banc is denied.

LONG ALDRIDGE
& NORMAN
ATTORNEYS AT LAW

Writer's Direct Dial Number
(404) 527-8312

September 17, 1997

VIA HAND DELIVERY

The Honorable Miguel J. Cortez
Clerk, United States Court of Appeals
for the Eleventh Circuit
56 Forsyth Street, NW
Atlanta, GA 30303

Re: Haddle v. Garrison, et al.,
Case No. 96-8856

Dear Mr. Cortez:

Appellees Jeanette Garrison; HLM, Inc. (f/k/a Healthmaster, Inc.); and J. Christopher Garrison, pursuant to Fed. R. App. P. 28(j) and Eleventh Circuit Rule 28-4 I.O.P.-6, submit this letter to bring to the Court's attention an intervening decision and new development. This development is the decision of the Superior Court of Richmond County, Georgia in *Haddle v. Garrison, et al.*, No. 96-RCCV-572 (Superior Court of Richmond County, Georgia, June 10, 1997) granting summary judgment to the defendants in that case, who are the Appellees in this case. (A copy is attached because the decision is not reported.) This decision is relevant to the argument made by Appellant that this case is distinguishable from *Morast v. Lance*, 807 F.2d 926 (11th Cir. 1987) because Appellant alleges the Appellees tortiously interfered with Appellant's employment. This point is argued at pages 10

through 12 and 14 through 16 of Appellant's initial brief. These Appellees noted the pendency of this state court action on page 2, note 1, of their brief and the point is argued at pages 18 through 19 of these Appellees' brief.

If I can be of further service to the Court, do not hesitate to contact me.

Very truly yours,

/s/ Phillip A. Bradley
Phillip A. Bradley

PAB/dmw
Enclosure

cc: Charles C. Stebbins, III, Esq.
Richard E. Miley, Esq.
C. Thompson Harley, Esq.
J. Patrick Claiborne, Esq.
(all w/enc.; via fax and U.S. mail)

SUPERIOR COURT OF RICHMOND COUNTY
STATE OF GEORGIA

MICHAEL A. HADDLE, Plaintiff	)	
v.	)	Civil Action File No. 96-RCCV-572
JEANETTE G. GARRISON, G. PETER MOLLOY, JR., HEALTHMASTER, INC., and CHRISTOPHER GARRISON, individually and as Trustee of certain trusts, Defendants.	)	

ORDER

(Filed Sept. 19, 1997)

The following motions are before the Court: (1) Defendants Jeanette G. Garrison and Healthmaster, Inc.'s Motion for an Entitled Partial Summary Judgment; (2) Defendant G. Peter Molloy's Motion for Summary Judgment; and (3) Defendants Jeanette G. Garrison and Christopher Garrison's Motion for Summary Judgment. After careful review, the Court hereby: (1) GRANTS Defendants Jeanette G. Garrison and Healthmaster, Inc.'s Motion for an Entitled Partial Summary Judgment; (2) GRANTS Defendant G. Peter Molloy's Motion for Summary Judgment; and (3) GRANTS Defendants Jeanette G. Garrison and Christopher Garrison's Motion for Summary Judgment.

Since the first two motions involve similar facts and legal issues, they will be addressed together. The Garrisons' motion has different facts and issues and will be discussed separately.

I. Garrison-HLM, Inc. and Molloy Motions

STATEMENT OF FACTS AND PROCEDURAL HISTORY

These motions involve Counts I (Georgia RICO violations) and II (tortious interference) of Plaintiff's Complaint.

Plaintiff formerly served as Director of Cost Reimbursement at Defendant Healthmaster, a corporation owned by Mrs. Garrison and her husband and controlled by Mrs. Garrison. (Healthmaster eventually changed its name to HLM, Inc.) At all relevant times, Plaintiff was an at-will employee of Healthmaster.

In 1994, the federal government began to investigate Healthmaster for fraudulent reimbursements it received from Medicare. Mrs. Garrison eventually pleaded guilty to related charges in July 1995, and the charges against Healthmaster were dropped.

In April of 1995, Healthmaster Home Health Care, Inc. ("HHHC"), a wholly owned subsidiary of HLM, Inc. (f/k/a/ Healthmaster, Inc.) ("HLM", filed for bankruptcy. All HLM employees were subsequently transferred to HHHC. Also in April 1995, Mrs. Garrison appointed Molloy, then an in-house lawyer for HLM, president of HHHC. Although Mrs. Garrison maintained contacts with HLC and HHHC up until her plea, it

appears that Molloy and A. Stephenson Wallace, the bankruptcy trustee appointed to this case, controlled the daily operations of the corporations after April 1995.

On June 21, 1995, Molloy, with the approval of the bankruptcy trustee, terminated Plaintiff. Molloy fired Plaintiff because he "stop[ped] doing his job" and "he had been very disloyal to the company." (Molloy Depo. pp. 8-9.) Molloy claims that he did not consult with or otherwise receive instructions from Mrs. Garrison before terminating Plaintiff. (Id. at 203-04.) Mrs. Garrison claims that she did not learn of Plaintiff's termination until after it happened. (J. Garrison Depo. pp. 75-76.)

On March 18, 1997, Mrs. Garrison and HLM, Inc. filed their Motion for Partial Summary Judgment on Counts I and II of Plaintiff's Second Amended Complaint. Molloy filed his Motion for Summary Judgment on March 31, 1997, and it likewise pertains to only Counts I and II.

CONCLUSIONS OF LAW

A. *Tortious Interference*

O.C.G.A. § 34-7-1 states in pertinent part that "an indefinite hiring may be terminated at will by either party." An employee may bring a claim for tortious interference with an employment contract if he shows that "a party with no authority to discharge the employee, being activated by an unlawful scheme or purpose to injure and damage him, maliciously and unlawfully persuades the employer to breach the contract with the employee." *Moore v. Barge*, 210 Ga. App. 552, 553, 436 S.E.2d 746 (1993), *quoting Campbell v. Carroll*, 121 Ga. App. 497, 499,

174 S.E.2d 375 (1978). However, "a person whose employment contract is at will has no cause of action for wrongful termination or tortious interference with the contract against one who has an absolute right to terminate that employee." *Moore; see also Georgia Power Co. v. Busbin*, 242 Ga. 612, 613, 250 S.E.2d 442 (1978); *Jellico v. Effingham County*, 221 Ga. App. 252, 253, 471 S.E.2d 36 (1996); *Ikemiya v. Shibamoto America*, 213 Ga. App. 271, 273 (1), 444 S.E.2d 351 (1994); *Mr. B's Oil Co. v. Register*, 181 Ga. App. 166, 167, 351 S.E.2d 533 (1986); *Troy v. Interstate Financial*, 171 Ga. App. 763, 766 (1), 320 S.E.2d 872 (1984).

Accordingly, the issue is whether Molloy had the authority to fire Plaintiff. At all relevant times Plaintiff was an at-will employee of HHHC. Molloy was president of HHHC when he fired Plaintiff. Along with Steve Wallace, the bankruptcy trustee for Healthmaster, Molloy ran the daily operations of HHHC. Molloy conferred with and received approval from Wallace before firing Plaintiff. (Wallace Depo. pp. 10 and 67) Therefore, Molloy had the authority to fire Plaintiff because he was the chief executive officer of HHHC and because he obtained the necessary authorization from the bankruptcy trustee. "Since the record shows that [Molloy], as president of [HHHC], had absolute authority to terminate [Haddle], he cannot be held liable." *Moore*, 210 Ga. App. at 553.

Plaintiff's allegations of a conspiracy of retaliatory discharge are unavailing. "Where the plaintiff's employment is terminable at will, the employer, with or without cause and regardless of the motives involved, can discharge the employee without incurring liability. Lengthy allegations regarding the motives or reasons for the firing are legally irrelevant." *Mr. B's Oil Co.*, 181 Ga. App. at

167. (citations omitted) *See also Miles v. Bibb Company*, 177 Ga. App. 364, 365, 339 S.E.2d 316 (1985).

"If there is no evidence sufficient to create a genuine issue as to any essential element of plaintiff's claim, that claim tumbles like a home of cards. All of the other disputes of fact are rendered immaterial." *Lau's Corp. v. Haskins*, 261 Ga. 491, 405 S.E.2d 474 (1991). Plaintiff cannot prove an essential element of his tortious interference claim, that is, he cannot show that Molloy lacked the authority to fire him. If the claim fails against Molloy, it also fails against Mrs. Garrison and HLM, since their liability for this claim depends on whether Molloy was authorized to fire Plaintiff. Molloy was, and the tortious interference claims against the Defendants fails.

B. *RICO*

O.C.G.A. § 16-14-4, the Georgia RICO Act, prohibits (a) the acquisition of anything of value "through a pattern of racketeering activity or proceeds derived therefrom"; (b) any participation in an enterprise "through a pattern of racketeering activity"; and (c) any conspiracy to violate (a) or (b). O.C.G.A. § 16-14-6(c) creates a civil remedy for a plaintiff who is "injured by reason of any violation of Code Section 16-14-4. . . . "

To maintain a cause of action under Georgia RICO, a plaintiff must establish a pattern of racketeering activity. O.C.G.A. § 16-14-3(8) defines a "pattern of racketeering activity" as "engaging in *at least two* incidents of racketeering activity that have the same or similar intents, results, accomplices, victims, or methods of commission

or otherwise are interrelated by distinguishing characteristics and are not isolated incidents." (emphasis added) "Racketeering activity" means "to commit, to attempt to commit, or to solicit, coerce or intimidate another person to commit any crime which is chargeable by indictment" under a list of laws. O.C.G.A. § 16-14-3(9).

Plaintiff cites three "predicate acts" that constitute a pattern of racketeering activity: (1) his employment termination; (2) the placing of Mr. O'Neal (a former employee of Master Health Plan, a subsidiary of Healthmaster) on administrative leave; and (3) the termination of Mr. O'Neal's employment. As was stated above, Plaintiff's employment was lawfully terminated; therefore, he cannot use his termination to establish racketeering activity.

As for the predicate acts relating to Mr. O'Neal, Judge Alaimo has ruled previously that these acts were lawful. In granting Mrs. Garrison's, HLM's and Molloy's motions for summary judgment on Mr. O'Neal's Georgia RICO claim, the court held:

> [t]he difficulty with O'Neal's claim is that it is based upon two predicate acts that, under Georgia law, are lawful. Garrison had authority to place O'Neal on administrative leave and Peloquin had authority to fire O'Neal. Both actions were lawful under Georgia law because O'Neal was merely an at-will employee who could be fired for virtually any reason at any time.

O'Neal v. Garrison, No. CV-196-28 (S.D. Ga. Feb. 28, 1997) at pp. 8-9.

Although the *O'Neal* decision is not binding on this Court, it should be extremely persuasive. Judge Alaimo relied on *Morast v. Lance*, 807 F.2d 926 (11th Cir. 1987), which held "that an at-will employee who is terminated cannot use the federal RICO statute to recover for that termination." *O'Neal*, at p. 7. In *Morast* the Eleventh Circuit affirmed the district court's dismissal of the plaintiff's Georgia RICO claim, noting that "Georgia's RICO statutes are essentially identical to the federal RICO statutes." *Morast*, 807 F.2d at 933.[1]

In both *Morast* and *O'Neal*, the court refused to allow the plaintiff to use the RICO statutes to recover for the loss of his job. Realizing the similarities between Georgia and federal RICO law, this Court likewise denies Plaintiff any relief under Georgia RICO. He cannot establish a pattern of racketeering activity since the Defendants lawfully terminated him and Mr. O'Neal. Although Plaintiff notes that Judge Alaimo found that O'Neal did have a claim for illegal retaliation under federal law, this is only one illegal act and therefore is not a pattern of racketeering activity. Accordingly, Plaintiff's RICO claims fail.

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[1] In his Brief in Opposition to Motion for Partial Summary Judgment of Defendants Jeanette G. Garrison and HLM, Inc. (formerly Healthmaster), Plaintiff states that "[i]n an all honesty, . . . if the *Morast* decision is correct on this point, then his case must fail." He then argues that *Morast* is not binding on this Court and that it was incorrectly decided.

DECISION

For the foregoing reasons, the Court GRANTS Mrs. Garrison and HLM's Motion for Partial Summary Judgment and Molloy's Motion for Summary Judgment. Defendants lawfully terminated Plaintiff, an at-will employee, and therefore are entitled to judgment as a matter of law on Plaintiff's tortious interference and RICO claims.

II. Jeanette and Christopher Garrison's Motion

STATEMENT OF FACTS AND PROCEDURAL HISTORY

This motion involves Count III (fraudulent conveyance) of Plaintiff's Complaint.

In 1993, the accounting firm of Ernst & Young suggested the use of grantor retained annuity trusts, or GRATS, as an estate planning device for Jeanette Garrison and her husband, Dr. Joseph Garrison. In a GRAT transaction, a person transfers property to a trust and retains the right to receive a fixed annuity payment for a specified number of years. At the end of the trust term, the property remaining in the trust either goes to the named beneficiaries or remains in trust for their benefit. The GRAT seeks to limit the grantor's transfer tax while maximizing the amount of appreciation in trust assets. (Letter from Swinton Griffith to Dennis Kelly of 11/12/93.)

From 1994 to 1995, Healthmaster was under federal and state investigation for Medicare fraud. On February 1, 1995, Jeanette Garrison transferred her stock in HLM,

Inc. and Health Care Services (HCS) to two GRATS. Phillip A. Bradley, her attorney, was designated the trustee for each GRAT. Mrs. Garrison owned 50% of the stock in both HLM and HCS, and her husband owned the other 50% of stock in each company. One of the GRATS received Mrs. Garrison's HLM stock and the other GRAT received her HCS stock. On the same date, Dr. Garrison transferred his HLM and HCS stock to two GRATS.

The beneficiaries of the GRATS are Christopher Garrison and Janece Garrison, the children of DR. and Mrs. Garrison. Dr. and Mrs. Garrison have already received annuity income from the GRATS. Christopher and Janece will receive the property remaining in the GRATS after all required payments are made to Dr. and Mrs. Garrison.

Mrs. Garrison, HLM and Master Health Plan were indicted in the U. S. District Court for the Southern District of Georgia on March 9, 1995. On June 21, 1995, Plaintiff was terminated by HHHC. Plaintiff filed the present Complaint on July 9, 1996. Mrs. Garrison and Christopher Garrison filed their Motion for Summary Judgment on March 20, 1997.

DISCUSSION

A. *Fraudulent Conveyances*

Plaintiff claims that the GRAT transactions described above constitute fraudulent conveyances under O.C.G.A. § 18-2-22. Defendants argue that they are entitled to summary judgment on this claim since Plaintiff was not one of their creditors at the time of the GRAT transactions.

O.C.G.A. § 18-2-22 states in full:

> The following acts by debtors shall be fraudulent in law against creditors and others and as to them shall be null and void:
>
> (1) Every assignment or transfer by a debtor, insolvent at the time, of real or personal property or choses in action of any description to any person, either in trust or for the benefit of or on behalf of creditors, where any trust or benefit is reserved to the assignor or any person for him;
>
> (2) Every conveyance of real or personal estate, by writing or otherwise, and every bond, suit, judgment and execution, or contract of any description had or made with the intention to delay or defraud creditors, where such intention is known to the taking parties; a bona fide transaction on a valuable consideration, where the taking party is without notice or ground for reasonable suspicion of said intent of the debtor, shall be valid; and
>
> (3) Every voluntary deed or conveyance, not for a valuable consideration, made by a debtor who is insolvent at the time of the conveyance.

Plaintiff claims that the GRAT transactions violated all three subsections. However, under the wording of the statute, the Plaintiff must show initially that he was a creditor of the Defendants. As is discussed below, Plaintiff cannot satisfy this threshold element.

1. Plaintiff as Creditor

The introductory language to O.C.G.A. § 18-2-22 states in part that certain "acts by debtors shall be fraudulent in law against creditors." Thus, the statute does not apply unless a debtor-creditor relationship exists.

There is no such relationship here. It does not appear that the Defendants owe the Plaintiff any money. The Plaintiff is not a claimholder against the Defendants by way of a tort action, since his tortious interference and RICO claims are meritless. The Plaintiff does not offer any other grounds establishing the required debtor-creditor relationship.

Under certain circumstances a plaintiff with an unliquidated claim may pursue a fraudulent conveyance claim. In *McVeigh v. Harrison*, 185 Ga. 121, 194 S.E. 208 (1937) the plaintiff sued the Defendants for the wrongful death of her child which occurred on March 28, 1936. Six days after the death of the child, one of the defendants transferred realty and personality to various family members. The plaintiff included in her complaint a fraudulent conveyance claim based on these transfers. The court held that, although technically not a "creditor," the plaintiff could sue the defendant and his grantees for fraudulent conveyance because the defendant transferred property *after the commission of the tort. Id.* at 130-31. (emphasis added) *McVeigh* is distinguishable from this case since the GRAT transactions occurred before the commission of the alleged tort, i.e. the termination of Plaintiff. *See also Downs v. Powell*, 215 Ga. 62, 108 S.E.2d 715 (1959).

Plaintiff correctly states that "[c]onveyances may be fraudulent as to subsequent creditors, as well as to existing creditors, if made with intent to defraud." *Jones v. J.S.H. Co.*, 199 Ga. 755, 769, 35 S.E.2d 288 (1945); *State Banking Co. v. Miller*, 185 Ga. 653, 656 (7), 196 S.E. 47 (1938). This argument is inapposite here, again because it relies on a debtor-creditor relationship. The Plaintiff cannot prove this relationship under any facts presented to the Court.

Accordingly, the Plaintiff's fraudulent conveyance claim fails because he cannot show a debtor-creditor relationship, an "essential element" of his claim. *See Lau's Corp., supra.*

DECISON

For the foregoing reasons, the Court GRANTS Mrs. Garrison and Christopher Garrison's Motion for Summary Judgment. The Defendants were not debtors of the Plaintiff at the time of the GRAT transactions, and therefore are entitled to judgment as a matter of law on the fraudulent conveyance claim.

It is so ORDERED this 10th day of June, 1997.

/s/ Bernard J. Mulherin, Sr.
J.S.C.A.J.C.